

110TH CONGRESS
1ST SESSION

S. 244

To improve women’s access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the delivery of obstetrical and gynecological services.

IN THE SENATE OF THE UNITED STATES

JANUARY 10, 2007

Mr. GREGG (for himself, Mr. McCONNELL, Mr. ENSIGN, Mr. CORNYN, Mr. SESSIONS, Mr. DEMINT, Mr. INHOFE, Mrs. DOLE, Mr. VOINOVICH, Mr. THUNE, Mr. ALLARD, and Mr. ALEXANDER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To improve women’s access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the delivery of obstetrical and gynecological services.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Healthy Mothers and
5 Healthy Babies Access to Care Act”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—

1 (1) EFFECT ON WOMEN'S ACCESS TO HEALTH
2 SERVICES.—Congress finds that—

3 (A) the current civil justice system is erod-
4 ing women's access to obstetrical and gynecolo-
5 gical services;

6 (B) the American College of Obstetricians
7 and Gynecologists (ACOG) has identified nearly
8 half of the States as having a medical liability
9 insurance crisis that is threatening access to
10 high-quality obstetrical and gynecological serv-
11 ices;

12 (C) because of the high cost of medical li-
13 ability insurance and the risk of being sued, one
14 in seven obstetricians and gynecologists have
15 stopped practicing obstetrics and one in five has
16 decreased their number of high-risk obstetrics
17 patients; and

18 (D) because of the lack of availability of
19 obstetrical services, women—

20 (i) must travel longer distances and
21 cross State lines to find a doctor;

22 (ii) have longer waiting periods (in
23 some cases months) for appointments;

24 (iii) have shorter visits with their phy-
25 sicians once they get appointments;

1 (iv) have less access to maternal-fetal
 2 medicine specialists, physicians with the
 3 most experience and training in the care of
 4 women with high-risk pregnancies; and

5 (v) have fewer hospitals with mater-
 6 nity wards where they can deliver their
 7 child, potentially endangering the lives and
 8 health of the woman and her unborn child.

9 (2) EFFECT ON INTERSTATE COMMERCE.—
 10 Congress finds that the health care and insurance
 11 industries are industries affecting interstate com-
 12 merce and the health care liability litigation systems
 13 existing throughout the United States are activities
 14 that affect interstate commerce by contributing to
 15 the high costs of health care and premiums for
 16 health care liability insurance purchased by health
 17 care system providers.

18 (3) EFFECT ON FEDERAL SPENDING.—Con-
 19 gress finds that the health care liability litigation
 20 systems existing throughout the United States have
 21 a significant effect on the amount, distribution, and
 22 use of Federal funds because of—

23 (A) the large number of individuals who
 24 receive health care benefits under programs op-
 25 erated or financed by the Federal Government;

1 (B) the large number of individuals who
2 benefit because of the exclusion from Federal
3 taxes of the amounts spent to provide them
4 with health insurance benefits; and

5 (C) the large number of health care pro-
6 viders who provide items or services for which
7 the Federal Government makes payments.

8 (b) PURPOSE.—It is the purpose of this Act to imple-
9 ment reasonable, comprehensive, and effective health care
10 liability reforms designed to—

11 (1) improve the availability of health care serv-
12 ices in cases in which health care liability actions
13 have been shown to be a factor in the decreased
14 availability of services;

15 (2) reduce the incidence of “defensive medi-
16 cine” and lower the cost of health care liability in-
17 surance, all of which contribute to the escalation of
18 health care costs;

19 (3) ensure that persons with meritorious health
20 care injury claims receive fair and adequate com-
21 pensation, including reasonable noneconomic dam-
22 ages;

23 (4) improve the fairness and cost-effectiveness
24 of our current health care liability system to resolve
25 disputes over, and provide compensation for, health

1 care liability by reducing uncertainty in the amount
 2 of compensation provided to injured individuals; and
 3 (5) provide an increased sharing of information
 4 in the health care system which will reduce unin-
 5 tended injury and improve patient care.

6 **SEC. 3. DEFINITIONS.**

7 In this Act:

8 (1) ALTERNATIVE DISPUTE RESOLUTION SYS-
 9 TEM; ADR.—The term “alternative dispute resolution
 10 system” or “ADR” means a system that provides
 11 for the resolution of health care lawsuits in a man-
 12 ner other than through a civil action brought in a
 13 State or Federal court.

14 (2) CLAIMANT.—The term “claimant” means
 15 any person who brings a health care lawsuit, includ-
 16 ing a person who asserts or claims a right to legal
 17 or equitable contribution, indemnity or subrogation,
 18 arising out of a health care liability claim or action,
 19 and any person on whose behalf such a claim is as-
 20 serted or such an action is brought, whether de-
 21 ceased, incompetent, or a minor.

22 (3) COLLATERAL SOURCE BENEFITS.—The
 23 term “collateral source benefits” means any amount
 24 paid or reasonably likely to be paid in the future to
 25 or on behalf of the claimant, or any service, product

1 or other benefit provided or reasonably likely to be
 2 provided in the future to or on behalf of the claim-
 3 ant, as a result of the injury or wrongful death, pur-
 4 suant to—

5 (A) any State or Federal health, sickness,
 6 income-disability, accident, or workers’ com-
 7 pensation law;

8 (B) any health, sickness, income-disability,
 9 or accident insurance that provides health bene-
 10 fits or income-disability coverage;

11 (C) any contract or agreement of any
 12 group, organization, partnership, or corporation
 13 to provide, pay for, or reimburse the cost of
 14 medical, hospital, dental, or income disability
 15 benefits; and

16 (D) any other publicly or privately funded
 17 program.

18 (4) COMPENSATORY DAMAGES.—The term
 19 “compensatory damages” means objectively
 20 verifiable monetary losses incurred as a result of the
 21 provision of, use of, or payment for (or failure to
 22 provide, use, or pay for) health care services or med-
 23 ical products, such as past and future medical ex-
 24 penses, loss of past and future earnings, cost of ob-
 25 taining domestic services, loss of employment, and

1 loss of business or employment opportunities, dam-
 2 ages for physical and emotional pain, suffering, in-
 3 convenience, physical impairment, mental anguish,
 4 disfigurement, loss of enjoyment of life, loss of soci-
 5 ety and companionship, loss of consortium (other
 6 than loss of domestic service), hedonic damages, in-
 7 jury to reputation, and all other nonpecuniary losses
 8 of any kind or nature. Such term includes economic
 9 damages and noneconomic damages, as such terms
 10 are defined in this section.

11 (5) CONTINGENT FEE.—The term “contingent
 12 fee” includes all compensation to any person or per-
 13 sons which is payable only if a recovery is effected
 14 on behalf of one or more claimants.

15 (6) ECONOMIC DAMAGES.—The term “economic
 16 damages” means objectively verifiable monetary
 17 losses incurred as a result of the provision of, use
 18 of, or payment for (or failure to provide, use, or pay
 19 for) health care services or medical products, such as
 20 past and future medical expenses, loss of past and
 21 future earnings, cost of obtaining domestic services,
 22 loss of employment, and loss of business or employ-
 23 ment opportunities.

24 (7) HEALTH CARE GOODS OR SERVICES.—The
 25 term “health care goods or services” means any ob-

1 stetrical or gynecological goods or services provided
 2 by a health care institution, provider, or by any indi-
 3 vidual working under the supervision of a health
 4 care provider, that relates to the diagnosis, preven-
 5 tion, care, or treatment of any obstetrical or gynecol-
 6 ogical-related human disease or impairment, or the
 7 assessment of the health of human beings.

8 (8) HEALTH CARE INSTITUTION.—The term
 9 “health care institution” means any entity licensed
 10 under Federal or State law to provide health care
 11 services (including but not limited to ambulatory
 12 surgical centers, assisted living facilities, emergency
 13 medical services providers, hospices, hospitals and
 14 hospital systems, nursing homes, or other entities li-
 15 censed to provide such services).

16 (9) HEALTH CARE LAWSUIT.—The term
 17 “health care lawsuit” means any health care liability
 18 claim concerning the provision of obstetrical or gynecol-
 19 ogical goods or services affecting interstate com-
 20 merce, or any health care liability action concerning
 21 the provision of (or the failure to provide) obstetrical
 22 or gynecological goods or services affecting interstate
 23 commerce, brought in a State or Federal court or
 24 pursuant to an alternative dispute resolution system,
 25 against a physician or other health care provider

1 who delivers obstetrical or gynecological services or
 2 a health care institution (only with respect to obstet-
 3 rical or gynecological services) regardless of the the-
 4 ory of liability on which the claim is based, or the
 5 number of claimants, plaintiffs, defendants, or other
 6 parties, or the number of claims or causes of action,
 7 in which the claimant alleges a health care liability
 8 claim.

9 (10) HEALTH CARE LIABILITY ACTION.—The
 10 term “health care liability action” means a civil ac-
 11 tion brought in a State or Federal Court or pursu-
 12 ant to an alternative dispute resolution system,
 13 against a health care provider who delivers obstet-
 14 rical or gynecological services or a health care insti-
 15 tution (only with respect to obstetrical or gynecol-
 16 ological services) regardless of the theory of liability
 17 on which the claim is based, or the number of plain-
 18 tiffs, defendants, or other parties, or the number of
 19 causes of action, in which the claimant alleges a
 20 health care liability claim.

21 (11) HEALTH CARE LIABILITY CLAIM.—The
 22 term “health care liability claim” means a demand
 23 by any person, whether or not pursuant to ADR,
 24 against a health care provider who delivers obstet-
 25 rical or gynecological services or a health care insti-

1 tution (only with respect to obstetrical or gynecological services), including third-party claims, cross-claims, counter-claims, or contribution claims, which
 2 are based upon the provision of, use of, or payment
 3 for (or the failure to provide, use, or pay for) obstetrical or gynecological services, regardless of the theory of liability on which the claim is based, or the
 4 number of plaintiffs, defendants, or other parties, or
 5 the number of causes of action.

10 (12) HEALTH CARE PROVIDER.—

11 (A) IN GENERAL.—The term “health care
 12 provider” means any person (including but not
 13 limited to a physician (as defined by section
 14 1861(r) of the Social Security Act (42 U.S.C.
 15 1395x(r)), nurse, dentist, podiatrist, pharmacist, chiropractor, or optometrist) required
 16 by State or Federal law to be licensed, registered, or certified to provide health care services, and being either so licensed, registered, or
 17 certified, or exempted from such requirement by
 18 other statute or regulation.

22 (B) TREATMENT OF CERTAIN PROFESSIONAL ASSOCIATIONS.—For purposes of this
 23 Act, a professional association that is organized
 24 under State law by an individual physician or
 25

1 group of physicians, a partnership or limited li-
2 ability partnership formed by a group of physi-
3 cians, a nonprofit health corporation certified
4 under State law, or a company formed by a
5 group of physicians under State law shall be
6 treated as a health care provider under sub-
7 paragraph (A).

8 (13) MALICIOUS INTENT TO INJURE.—The
9 term “malicious intent to injure” means inten-
10 tionally causing or attempting to cause physical in-
11 jury other than providing health care goods or serv-
12 ices.

13 (14) NONECONOMIC DAMAGES.—The term
14 “noneconomic damages” means damages for phys-
15 ical and emotional pain, suffering, inconvenience,
16 physical impairment, mental anguish, disfigurement,
17 loss of enjoyment of life, loss of society and compan-
18 ionship, loss of consortium (other than loss of do-
19 mestic service), hedonic damages, injury to reputa-
20 tion, and all other nonpecuniary losses of any kind
21 or nature.

22 (15) OBSTETRICAL OR GYNECOLOGICAL SERV-
23 ICES.—The term “obstetrical or gynecological serv-
24 ices” means services for pre-natal care or labor and
25 delivery, including the immediate postpartum period

1 (as determined in accordance with the definition of
2 postpartum used for purposes of title XIX of the So-
3 cial Security Act (42 U.S.C. 1396 et seq.)).

4 (16) PUNITIVE DAMAGES.—The term “punitive
5 damages” means damages awarded, for the purpose
6 of punishment or deterrence, and not solely for com-
7 pensatory purposes, against a health care provider
8 who delivers obstetrical or gynecological services or
9 a health care institution. Punitive damages are nei-
10 ther economic nor noneconomic damages.

11 (17) RECOVERY.—The term “recovery” means
12 the net sum recovered after deducting any disburse-
13 ments or costs incurred in connection with prosecu-
14 tion or settlement of the claim, including all costs
15 paid or advanced by any person. Costs of health care
16 incurred by the plaintiff and the attorneys’ office
17 overhead costs or charges for legal services are not
18 deductible disbursements or costs for such purpose.

19 (18) STATE.—The term “State” means each of
20 the several States, the District of Columbia, the
21 Commonwealth of Puerto Rico, the Virgin Islands,
22 Guam, American Samoa, the Northern Mariana Is-
23 lands, the Trust Territory of the Pacific Islands, and
24 any other territory or possession of the United
25 States, or any political subdivision thereof.

1 **SEC. 4. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.**

2 (a) IN GENERAL.—Except as otherwise provided for
3 in this section, the time for the commencement of a health
4 care lawsuit shall be 3 years after the date of manifesta-
5 tion of injury or 1 year after the claimant discovers, or
6 through the use of reasonable diligence should have discov-
7 ered, the injury, whichever occurs first.

8 (b) GENERAL EXCEPTION.—The time for the com-
9 mencement of a health care lawsuit shall not exceed 3
10 years after the date of manifestation of injury unless the
11 tolling of time was delayed as a result of—

12 (1) fraud;

13 (2) intentional concealment; or

14 (3) the presence of a foreign body, which has no
15 therapeutic or diagnostic purpose or effect, in the
16 person of the injured person.

17 (c) MINORS.—An action by a minor shall be com-
18 menced within 3 years from the date of the alleged mani-
19 festation of injury except that if such minor is under the
20 full age of 6 years, such action shall be commenced within
21 3 years of the manifestation of injury, or prior to the
22 eighth birthday of the minor, whichever provides a longer
23 period. Such time limitation shall be tolled for minors for
24 any period during which a parent or guardian and a health
25 care provider or health care institution have committed

1 fraud or collusion in the failure to bring an action on be-
 2 half of the injured minor.

3 (d) RULE 11 SANCTIONS.—Whenever a Federal or
 4 State court determines (whether by motion of the parties
 5 or whether on the motion of the court) that there has been
 6 a violation of Rule 11 of the Federal Rules of Civil Proce-
 7 dure (or a similar violation of applicable State court rules)
 8 in a health care liability action to which this Act applies,
 9 the court shall impose upon the attorneys, law firms, or
 10 pro se litigants that have violated Rule 11 or are respon-
 11 sible for the violation, an appropriate sanction, which shall
 12 include an order to pay the other party or parties for the
 13 reasonable expenses incurred as a direct result of the filing
 14 of the pleading, motion, or other paper that is the subject
 15 of the violation, including a reasonable attorneys’ fee.
 16 Such sanction shall be sufficient to deter repetition of such
 17 conduct or comparable conduct by others similarly situ-
 18 ated, and to compensate the party or parties injured by
 19 such conduct.

20 **SEC. 5. COMPENSATING PATIENT INJURY.**

21 (a) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL
 22 ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.—In any
 23 health care lawsuit, nothing in this Act shall limit the re-
 24 covery by a claimant of the full amount of the available

1 economic damages, notwithstanding the limitation con-
2 tained in subsection (b).

3 (b) ADDITIONAL NONECONOMIC DAMAGES.—

4 (1) HEALTH CARE PROVIDERS.—In any health
5 care lawsuit where final judgment is rendered
6 against a health care provider, the amount of non-
7 economic damages recovered from the provider, if
8 otherwise available under applicable Federal or State
9 law, may be as much as \$250,000, regardless of the
10 number of parties other than a health care institu-
11 tion against whom the action is brought or the num-
12 ber of separate claims or actions brought with re-
13 spect to the same occurrence.

14 (2) HEALTH CARE INSTITUTIONS.—

15 (A) SINGLE INSTITUTION.—In any health
16 care lawsuit where final judgment is rendered
17 against a single health care institution, the
18 amount of noneconomic damages recovered
19 from the institution, if otherwise available
20 under applicable Federal or State law, may be
21 as much as \$250,000, regardless of the number
22 of parties against whom the action is brought
23 or the number of separate claims or actions
24 brought with respect to the same occurrence.

1 (B) MULTIPLE INSTITUTIONS.—In any
2 health care lawsuit where final judgment is ren-
3 dered against more than one health care insti-
4 tution, the amount of noneconomic damages re-
5 covered from each institution, if otherwise avail-
6 able under applicable Federal or State law, may
7 be as much as \$250,000, regardless of the
8 number of parties against whom the action is
9 brought or the number of separate claims or ac-
10 tions brought with respect to the same occur-
11 rence, except that the total amount recovered
12 from all such institutions in such lawsuit shall
13 not exceed \$500,000.

14 (c) NO DISCOUNT OF AWARD FOR NONECONOMIC
15 DAMAGES.—In any health care lawsuit—

16 (1) an award for future noneconomic damages
17 shall not be discounted to present value;

18 (2) the jury shall not be informed about the
19 maximum award for noneconomic damages under
20 subsection (b);

21 (3) an award for noneconomic damages in ex-
22 cess of the limitations provided for in subsection (b)
23 shall be reduced either before the entry of judgment,
24 or by amendment of the judgment after entry of
25 judgment, and such reduction shall be made before

1 accounting for any other reduction in damages re-
 2 quired by law; and

3 (4) if separate awards are rendered for past
 4 and future noneconomic damages and the combined
 5 awards exceed the limitations provided for in sub-
 6 section (b), the future noneconomic damages shall be
 7 reduced first.

8 (d) FAIR SHARE RULE.—In any health care lawsuit,
 9 each party shall be liable for that party's several share
 10 of any damages only and not for the share of any other
 11 person. Each party shall be liable only for the amount of
 12 damages allocated to such party in direct proportion to
 13 such party's percentage of responsibility. A separate judg-
 14 ment shall be rendered against each such party for the
 15 amount allocated to such party. For purposes of this sec-
 16 tion, the trier of fact shall determine the proportion of
 17 responsibility of each party for the claimant's harm.

18 **SEC. 6. MAXIMIZING PATIENT RECOVERY.**

19 (a) COURT SUPERVISION OF SHARE OF DAMAGES
 20 ACTUALLY PAID TO CLAIMANTS.—

21 (1) IN GENERAL.—In any health care lawsuit,
 22 the court shall supervise the arrangements for pay-
 23 ment of damages to protect against conflicts of in-
 24 terest that may have the effect of reducing the

1 amount of damages awarded that are actually paid
2 to claimants.

3 (2) CONTINGENCY FEES.—

4 (A) IN GENERAL.—In any health care law-
5 suit in which the attorney for a party claims a
6 financial stake in the outcome by virtue of a
7 contingent fee, the court shall have the power
8 to restrict the payment of a claimant's damage
9 recovery to such attorney, and to redirect such
10 damages to the claimant based upon the inter-
11 ests of justice and principles of equity.

12 (B) LIMITATION.—The total of all contin-
13 gent fees for representing all claimants in a
14 health care lawsuit shall not exceed the fol-
15 lowing limits:

16 (i) 40 percent of the first \$50,000 re-
17 covered by the claimant(s).

18 (ii) $33\frac{1}{3}$ percent of the next \$50,000
19 recovered by the claimant(s).

20 (iii) 25 percent of the next \$500,000
21 recovered by the claimant(s).

22 (iv) 15 percent of any amount by
23 which the recovery by the claimant(s) is in
24 excess of \$600,000.

25 (b) APPLICABILITY.—

1 (1) IN GENERAL.—The limitations in subsection
 2 (a) shall apply whether the recovery is by judgment,
 3 settlement, mediation, arbitration, or any other form
 4 of alternative dispute resolution.

5 (2) MINORS.—In a health care lawsuit involving
 6 a minor or incompetent person, a court retains the
 7 authority to authorize or approve a fee that is less
 8 than the maximum permitted under this section.

9 (c) EXPERT WITNESSES.—

10 (1) REQUIREMENT.—No individual shall be
 11 qualified to testify as an expert witness concerning
 12 issues of negligence in any health care lawsuit
 13 against a defendant unless such individual—

14 (A) except as required under paragraph
 15 (2), is a health care professional who—

16 (i) is appropriately credentialed or li-
 17 censed in 1 or more States to deliver
 18 health care services; and

19 (ii) typically treats the diagnosis or
 20 condition or provides the type of treatment
 21 under review; and

22 (B) can demonstrate by competent evi-
 23 dence that, as a result of training, education,
 24 knowledge, and experience in the evaluation, di-
 25 agnosis, and treatment of the disease or injury

1 which is the subject matter of the lawsuit
2 against the defendant, the individual was sub-
3 stantially familiar with applicable standards of
4 care and practice as they relate to the act or
5 omission which is the subject of the lawsuit on
6 the date of the incident.

7 (2) PHYSICIAN REVIEW.—In a health care law-
8 suit, if the claim of the plaintiff involved treatment
9 that is recommended or provided by a physician
10 (allopathic or osteopathic), an individual shall not be
11 qualified to be an expert witness under this sub-
12 section with respect to issues of negligence con-
13 cerning such treatment unless such individual is a
14 physician.

15 (3) SPECIALTIES AND SUBSPECIALTIES.—With
16 respect to a lawsuit described in paragraph (1), a
17 court shall not permit an expert in one medical spe-
18 cialty or subspecialty to testify against a defendant
19 in another medical specialty or subspecialty unless,
20 in addition to a showing of substantial familiarity in
21 accordance with paragraph (1)(B), there is a show-
22 ing that the standards of care and practice in the
23 two specialty or subspecialty fields are similar.

24 (4) LIMITATION.—The limitations in this sub-
25 section shall not apply to expert witnesses testifying

1 as to the degree or permanency of medical or phys-
2 ical impairment.

3 **SEC. 7. ADDITIONAL HEALTH BENEFITS.**

4 (a) IN GENERAL.—The amount of any damages re-
5 ceived by a claimant in any health care lawsuit shall be
6 reduced by the court by the amount of any collateral
7 source benefits to which the claimant is entitled, less any
8 insurance premiums or other payments made by the claim-
9 ant (or by the spouse, parent, child, or legal guardian of
10 the claimant) to obtain or secure such benefits.

11 (b) PRESERVATION OF CURRENT LAW.—Where a
12 payor of collateral source benefits has a right of recovery
13 by reimbursement or subrogation and such right is per-
14 mitted under Federal or State law, subsection (a) shall
15 not apply.

16 (c) APPLICATION OF PROVISION.—This section shall
17 apply to any health care lawsuit that is settled or resolved
18 by a fact finder.

19 **SEC. 8. PUNITIVE DAMAGES.**

20 (a) PUNITIVE DAMAGES PERMITTED.—

21 (1) IN GENERAL.—Punitive damages may, if
22 otherwise available under applicable State or Federal
23 law, be awarded against any person in a health care
24 lawsuit only if it is proven by clear and convincing
25 evidence that such person acted with malicious in-

1 tent to injure the claimant, or that such person de-
 2 liberately failed to avoid unnecessary injury that
 3 such person knew the claimant was substantially
 4 certain to suffer.

5 (2) FILING OF LAWSUIT.—No demand for puni-
 6 tive damages shall be included in a health care law-
 7 suit as initially filed. A court may allow a claimant
 8 to file an amended pleading for punitive damages
 9 only upon a motion by the claimant and after a find-
 10 ing by the court, upon review of supporting and op-
 11 posing affidavits or after a hearing, after weighing
 12 the evidence, that the claimant has established by a
 13 substantial probability that the claimant will prevail
 14 on the claim for punitive damages.

15 (3) SEPARATE PROCEEDING.—At the request of
 16 any party in a health care lawsuit, the trier of fact
 17 shall consider in a separate proceeding—

18 (A) whether punitive damages are to be
 19 awarded and the amount of such award; and

20 (B) the amount of punitive damages fol-
 21 lowing a determination of punitive liability.

22 If a separate proceeding is requested, evidence rel-
 23 evant only to the claim for punitive damages, as de-
 24 termined by applicable State law, shall be inadmis-

1 sible in any proceeding to determine whether com-
 2 pensatory damages are to be awarded.

3 (4) LIMITATION WHERE NO COMPENSATORY
 4 DAMAGES ARE AWARDED.—In any health care law-
 5 suit where no judgment for compensatory damages
 6 is rendered against a person, no punitive damages
 7 may be awarded with respect to the claim in such
 8 lawsuit against such person.

9 (b) DETERMINING AMOUNT OF PUNITIVE DAM-
 10 AGES.—

11 (1) FACTORS CONSIDERED.—In determining
 12 the amount of punitive damages under this section,
 13 the trier of fact shall consider only the following:

14 (A) the severity of the harm caused by the
 15 conduct of such party;

16 (B) the duration of the conduct or any
 17 concealment of it by such party;

18 (C) the profitability of the conduct to such
 19 party;

20 (D) the number of products sold or med-
 21 ical procedures rendered for compensation, as
 22 the case may be, by such party, of the kind
 23 causing the harm complained of by the claim-
 24 ant;

1 (E) any criminal penalties imposed on such
 2 party, as a result of the conduct complained of
 3 by the claimant; and

4 (F) the amount of any civil fines assessed
 5 against such party as a result of the conduct
 6 complained of by the claimant.

7 (2) MAXIMUM AWARD.—The amount of punitive
 8 damages awarded in a health care lawsuit may not
 9 exceed an amount equal to two times the amount of
 10 economic damages awarded in the lawsuit or
 11 \$250,000, whichever is greater. The jury shall not
 12 be informed of the limitation under the preceding
 13 sentence.

14 (c) LIABILITY OF HEALTH CARE PROVIDERS.—

15 (1) IN GENERAL.—A health care provider who
 16 prescribes, or who dispenses pursuant to a prescrip-
 17 tion, a drug, biological product, or medical device
 18 approved by the Food and Drug Administration, for
 19 an approved indication of the drug, biological prod-
 20 uct, or medical device, shall not be named as a party
 21 to a product liability lawsuit invoking such drug, bi-
 22 ological product, or medical device and shall not be
 23 liable to a claimant in a class action lawsuit against
 24 the manufacturer, distributor, or product seller of
 25 such drug, biological product, or medical device.

1 (2) MEDICAL PRODUCT.—The term “medical
 2 product” means a drug or device intended for hu-
 3 mans. The terms “drug” and “device” have the
 4 meanings given such terms in sections 201(g)(1) and
 5 201(h) of the Federal Food, Drug and Cosmetic Act
 6 (21 U.S.C. 321), respectively, including any compo-
 7 nent or raw material used therein, but excluding
 8 health care services.

9 **SEC. 9. AUTHORIZATION OF PAYMENT OF FUTURE DAM-**
 10 **AGES TO CLAIMANTS IN HEALTH CARE LAW-**
 11 **SUITS.**

12 (a) IN GENERAL.—In any health care lawsuit, if an
 13 award of future damages, without reduction to present
 14 value, equaling or exceeding \$50,000 is made against a
 15 party with sufficient insurance or other assets to fund a
 16 periodic payment of such a judgment, the court shall, at
 17 the request of any party, enter a judgment ordering that
 18 the future damages be paid by periodic payments. In any
 19 health care lawsuit, the court may be guided by the Uni-
 20 form Periodic Payment of Judgments Act promulgated by
 21 the National Conference of Commissioners on Uniform
 22 State Laws.

23 (b) APPLICABILITY.—This section applies to all ac-
 24 tions which have not been first set for trial or retrial be-
 25 fore the effective date of this Act.

1 **SEC. 10. EFFECT ON OTHER LAWS.**

2 (a) GENERAL VACCINE INJURY.—

3 (1) IN GENERAL.—To the extent that title XXI
4 of the Public Health Service Act establishes a Fed-
5 eral rule of law applicable to a civil action brought
6 for a vaccine-related injury or death—

7 (A) this Act shall not affect the application
8 of the rule of law to such an action; and

9 (B) any rule of law prescribed by this Act
10 in conflict with a rule of law of such title XXI
11 shall not apply to such action.

12 (2) EXCEPTION.—If there is an aspect of a civil
13 action brought for a vaccine-related injury or death
14 to which a Federal rule of law under title XXI of
15 the Public Health Service Act does not apply, then
16 this Act or otherwise applicable law (as determined
17 under this Act) will apply to such aspect of such ac-
18 tion.

19 (b) SMALLPOX VACCINE INJURY.—

20 (1) IN GENERAL.—To the extent that part C of
21 title II of the Public Health Service Act establishes
22 a Federal rule of law applicable to a civil action
23 brought for a smallpox vaccine-related injury or
24 death—

25 (A) this Act shall not affect the application
26 of the rule of law to such an action; and

1 (B) any rule of law prescribed by this Act
2 in conflict with a rule of law of such part C
3 shall not apply to such action.

4 (2) EXCEPTION.—If there is an aspect of a civil
5 action brought for a smallpox vaccine-related injury
6 or death to which a Federal rule of law under part
7 C of title II of the Public Health Service Act does
8 not apply, then this Act or otherwise applicable law
9 (as determined under this Act) will apply to such as-
10 pect of such action.

11 (c) OTHER FEDERAL LAW.—Except as provided in
12 this section, nothing in this Act shall be deemed to affect
13 any defense available, or any limitation on liability that
14 applies to, a defendant in a health care lawsuit or action
15 under any other provision of Federal law.

16 **SEC. 11. STATE FLEXIBILITY AND PROTECTION OF STATES'**
17 **RIGHTS.**

18 (a) HEALTH CARE LAWSUITS.—The provisions gov-
19 erning health care lawsuits set forth in this Act shall pre-
20 empt, subject to subsections (b) and (c), State law to the
21 extent that State law prevents the application of any pro-
22 visions of law established by or under this Act. The provi-
23 sions governing health care lawsuits set forth in this Act
24 supersede chapter 171 of title 28, United States Code, to
25 the extent that such chapter—

1 (1) provides for a greater amount of damages
 2 or contingent fees, a longer period in which a health
 3 care lawsuit may be commenced, or a reduced appli-
 4 cability or scope of periodic payment of future dam-
 5 ages, than provided in this Act; or

6 (2) prohibits the introduction of evidence re-
 7 garding collateral source benefits.

8 (b) PREEMPTION OF CERTAIN STATE LAWS.—No
 9 provision of this Act shall be construed to preempt any
 10 State law (whether effective before, on, or after the date
 11 of the enactment of this Act) that specifies a particular
 12 monetary amount of compensatory or punitive damages
 13 (or the total amount of damages) that may be awarded
 14 in a health care lawsuit, regardless of whether such mone-
 15 tary amount is greater or lesser than is provided for under
 16 this Act, notwithstanding section 5(a).

17 (c) PROTECTION OF STATE’S RIGHTS AND OTHER
 18 LAWS.—

19 (1) IN GENERAL.—Any issue that is not gov-
 20 erned by a provision of law established by or under
 21 this Act (including the State standards of neg-
 22 ligence) shall be governed by otherwise applicable
 23 Federal or State law.

24 (2) RULE OF CONSTRUCTION.—Nothing in this
 25 Act shall be construed to—

1 (A) preempt or supersede any Federal or
2 State law that imposes greater procedural or
3 substantive protections for a health care pro-
4 vider or health care institution from liability,
5 loss, or damages than those provided by this
6 Act;

7 (B) preempt or supercede any State law
8 that permits and provides for the enforcement
9 of any arbitration agreement related to a health
10 care liability claim whether enacted prior to or
11 after the date of enactment of this Act;

12 (C) create a cause of action that is not
13 otherwise available under Federal or State law;
14 or

15 (D) affect the scope of preemption of any
16 other Federal law.

17 **SEC. 12. APPLICABILITY; EFFECTIVE DATE.**

18 This Act shall apply to any health care lawsuit
19 brought in a Federal or State court, or subject to an alter-
20 native dispute resolution system, that is initiated on or
21 after the date of the enactment of this Act, except that
22 any health care lawsuit arising from an injury occurring
23 prior to the date of enactment of this Act shall be gov-

- 1 earned by the applicable statute of limitations provisions
- 2 in effect at the time the injury occurred.

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